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Attorneys for RICHARD and MAMIE SCHELL

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

<i>In re:</i>	) Case No. 19-30088 (DM)
	) Chapter 11
PG&E CORPORATION	) (Lead Case)
	) (Jointly Administered)
-and-)
PACIFIC GAS AND ELECTRIC	) MOTION PURSUANT TO FEDERAL
COMPANY	) RULE OF BANKRUPTCY PROCEDURE
Debtors.	) 9006(b)(1) TO DEEM RICHARD AND
	) MAMIE SCHELL'S CLAIM TIMELY
	) FILED
<input type="checkbox"/> Affects PG&E Corporation)
<input type="checkbox"/> Affects Pacific Gas & Electric	) Date: February 15, 2022
<input checked="" type="checkbox"/> Affects Both Debtors	) Time: 10:00 a.m.
	) Place: To Be Held Telephonically
	) United States Bankruptcy Court
	) Courtroom 17
<i>All papers shall be filed in the Lead Case,</i>	) 450 Golden Gate Avenue
<i>No.19-30088 (DM)</i>	) 16 th Floor
	) San Francisco, CA
	Judge: Honorable Dennis Montali

Objection Deadline: February 8, 2022

Pursuant to Rule 9006(b) of the Federal Rules of Bankruptcy Procedure, Claimants Richard Schell and Mamie Schell move for an order expanding time to file Proof of Claim, and allow, Claim Number 108139, that was filed on January 12, 2022, with Prime Clerk and submitted with this motion as "Exhibit A", to be considered timely filed. This motion is based upon the points and authorities set forth herein and concurrently Filed Notice of Motion and

1 Declaration of Robert Schell, in addition to any evidence or oral argument presented at the time of
2 hearing on this matter.

3 **I.**

4 **SUMMARY OF ARGUMENT**

5 Under the flexible standard for excusable neglect, Richard Schell and Mamie Schell's
6 claim should be allowed.

7 Richard Schell and Mamie Schell, due to their mental state, trying to find housing and
8 being misinformed, were unaware of the claim process. Under the factors in the United States
9 Supreme Court case of *Pioneer Investment Services v. Brunswick Associated Ltd. Partnership* 507
10 U.S. 380 (1993), the circumstances of this case clearly present excusable neglect. In following
11 *Pioneer*, the Ninth Circuit found that even when experienced counsel failed to calendar an
12 appellate deadline with no extraneous circumstances, a finding of excusable neglect was proper.
13 *Pincay v. Andrews* 389 F.3d 853, 859 (9th Cir. 2004). This case presents no prejudice to the
14 Debtors, no delay to the judicial administration of this case, and is made in good faith. Rather, to
15 deny this claim would work a severe injustice to the Claimant, which must be considered. *Id.*

16 **II.**

17 **PROCEDURAL BACKGROUND**

18 On January 29, 2019, the Debtors, PG&E Corporation and Pacific Gas and Electric
19 Company ("Debtors") filed a voluntary Chapter 11 Petition. *See* Dkt. 1. On July 2, 2019, the
20 Court entered an order establishing October 21, 2019 ("the bar date") as the deadline for Fire
21 Victim claimants to file proofs of claim in this bankruptcy. *See* Dkt. 2806. That deadline was
22 extended to December 31, 2019 ("the "extended bar date."). *See* Dkt. 4872.

23 **III.**

24 **FACTUAL BACKGROUND**

25 Richard Schell and Mamie Schell, age 80 and 77, respectively, at the time of the fire,
26 suffered significant losses including the loss of their home, the loss of all of their personal
27 belongings and emotional distress as a result of the Camp Fire. Richard Schell, in addition to
28 caring for his ill wife, had to find suitable housing. Richard Schell was misinformed about the

1 claim process until recently. Immediately upon discovering this, he retained counsel and has filed
2 a claim with Prime Clerk. *See* Exhibit “A.”

3 IV.

4 ARGUMENT

5 The time in which to make claims in a Chapter 11 Bankruptcy may be extended by motion
6 based on excusable neglect. Federal Rules of Bankruptcy Procedure, Rule 9006(b)(1) provides:

7 (b) Enlargement.

8 (1) *In general.* Except as provided in paragraphs (2) and (3) of this subdivision,
9 when an act is required or allowed to be done at or within a specified period by
10 these rules or by a notice given thereunder or by order of court, the court for cause
11 shown may at any time in its discretion (1) with or without motion or notice order
12 the period enlarged if the request therefor is made before the expiration of the
13 period originally prescribed or as extended by a previous order or (2) **on motion
made after the expiration of the specified period permit the act to be done
where the failure to act was the result of excusable neglect.**

14 Fed R. Bank. Proc. 9006.(b)(1). *Emphasis supplied.*

15 Determination of excusable neglect has been interpreted by the United States Supreme
16 Court as an equitable consideration.

17 “We conclude the determination at bottom an equitable one, taking account of all relevant
18 circumstances surrounding the party’s omission. These include . . .the danger of prejudice
19 to the debtor, the length of the delay and its potential impact on judicial proceedings, the
20 reason for the delay, including whether it was within the reasonable control of the movant,
21 and whether the movant acted in good faith.”*Pioneer Inv. Servs v. Brunswick Assoc.*
22 *Ltd.P’ship*, 507 U.S. 380, 395 (1993)

23 Here, there is no danger of prejudice to the Debtors. Where the claim does not disrupt the
24 distribution process, no prejudice will result. *In re Sacred Heart Hosp.* 186 B.R. 891, 897.
25 (“Exactly how the debtor’s assets are distributed is ultimately of little consequence to the
26 debtor, so long as the claim is not filed so late as to disrupt the distribution process.”)

27 Further, the delay is not significant. The Trust has only completed determinations on
28 approximately 40% of all claims. Allowing the late claim will not delay the proceedings.

29 The reason for the delay in filing a claim simply was that Richard Schell was misinformed
30 of the process due to misinformation, finding suitable housing and taking care of his mentally ill
31 wife. Excusable neglect will be found even where sophisticated attorneys miss a deadline.

1 *ZILOG, Inc. v. Corning (In re ZILOG, Inc.* 450 F.3d 996, 1006). The case for excusable neglect
2 is even more compelling when the mistake was made by an unrepresented layperson. *Id.*

3 Further, Richard Schell acted in good faith. His failure to file was not based on litigation
4 tactics where a party deliberately misses a deadline to gain advantage. *Venice Baking Co. v.*
5 *Sophast Sales &Mkg. LLC* 2016 U.S. Dist LEXIS 141533. (This factor alone weighs against
6 finding excusable neglect even when the other *Pioneer* factors are present).

7 And, finally, the likelihood of injustice is great, if this claim is not permitted. Mr. Schell
8 is a Camp Fire victim whose primary avenue for compensation is through this bankruptcy. This is
9 a factor which was properly considered by the Court in *Pincay, supra*, 389 F.3d at 859.

10 V.

11 **CONCLUSION**

12 For all of the above reasons, the motion should be granted, and Richard and Mamie
13 Schell's claim should be allowed to be deemed timely.

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15
16 Dated: January 13, 2022

Respectfully submitted,

17 THE KANE LAW FIRM

18 By: /s/ Bonnie E. Kane

19 BONNIE E. KANE

20 Attorneys for RICHARD & MAMIE SCHELL
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